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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/779,175	02/08/2001	Jim Mosbaugh	P992180-01DV	9087
26376	7590	05/21/2003		
FOWLER WHITE BOGGS BANKER, P.A. 501 E. KENNEDY BOULEVARD SUITE 1700 TAMPA, FL 33602			EXAMINER COLE, MONIQUE T	
			ART UNIT 1743	PAPER NUMBER
			DATE MAILED: 05/21/2003	

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Applicant No .	Applicant(s)	
	09/779,175	MOSBAUGH, JIM	
	Examiner Monique T. Cole	Art Unit 1743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 26 February 2003 .

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 7-13 and 15-19 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 7-13 and 15-19 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

- Certified copies of the priority documents have been received.
- Certified copies of the priority documents have been received in Application No. \_\_\_\_\_ .
- Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

1) Notice of References Cited (PTO-892) 4) Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_ .

2) Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) Notice of Informal Patent Application (PTO-152)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ . 6) Other: \_\_\_\_\_ .

## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 7-13 & 15-19 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Namely, it is not clear where Applicant has support for the newly added claim limitation "particles". Applicant, in his remarks, has pointed to paragraphs 26 & 30 as the basis for the support, however this support is still not clear to the Examiner. Further clarification is required.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 7 & 9 are rejected under 35 U.S.C. 102(b) as being anticipated by USP 5,149,474 to Rohatyn (herein referred to as "Rohatyn").

Rohatyn teaches a method of making glass, forming molds of an amorphous fused silica composition comprising: mixing  $Al_2O_3$ ,  $CaO$  and  $SiO_2$  together to form a mixture, drying the mixture and the temperature-curing in an oven the material to form an agglomeration (see col. 6, line 35-col. 7, line 27).

While Rohatyn does not expressly teach that the amorphous fused silica composition is dried to form particles of a dry resultant material, it is the Examiner's position that because crystals of the amorphous fused silica are present prior to the drying step (col. 7, lines 4-6), the crystals would be present thereafter, even if some of the particles had formed larger agglomerates. Thus, for the reason set forth above, Applicant's claimed invention is deemed to be inherent, within the meaning of 35 USC 102(b).

*Response to Arguments*

2. Applicant's arguments filed 2/26/2003 have been fully considered but they are not persuasive. Applicant has amended the instant claims to make it clear that the claimed material and the Rohatyn are very different materials. However, it is the Examiner's position that modifying the claim language to reflect that the mixture of silicates and modifiers are dried to form particles of a resultant material is inherent to the cited prior art. While Rohatyn does not expressly teach that the amorphous fused silica composition is dried to form particles of a dry resultant material, because crystals of the amorphous fused silica are present prior to the drying step (col. 7, lines 4-6), the crystals would be present thereafter, even if some of the particles had formed larger agglomerates.

*Allowable Subject Matter*

3. Claims 8, 10-13 and 15-19 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph & 35 U.S.C. 103(a), set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Monique T. Cole whose telephone number is 703-305-0447. The examiner can normally be reached on Monday-Thursday from 6:30 A.M. to 4:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 703-308-4037. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-0661.

Monique T. Cole  
Examiner  
Art Unit 1743

MC *MC*  
May 17, 2003

*Jill Warden*  
Jill Warden  
Supervisory Patent Examiner  
Technology Center 1700